

FILED

FEB 17 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CURTIS EUGENE AGUIRRE,

Petitioner - Appellant,

v.

SUZAN HUBBARD, WARDEN; et al.,

Respondents - Appellees.

No. 05-15721

D.C. No. CV-99-02302-MCE/JFM

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
Morrison C. England, District Judge, Presiding

Submitted February 13, 2006^{**}

Before: FERNANDEZ, RYMER, and BYBEE, Circuit Judges.

California state prisoner Curtis Eugene Aguirre appeals from the district court's order denying his 28 U.S.C. § 2254 petition challenging his twenty-five

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

years to life sentence imposed after his no contest plea for possession of 0.1 gram of a substance containing methamphetamine. We have jurisdiction pursuant to 28 U.S.C. § 2253. We review de novo, *Eslaminia v. White*, 136 F.3d 1234, 1236 (9th Cir. 1998), and we dismiss.

Aguirre contends that his sentence constitutes cruel and unusual punishment, in violation of the Eighth Amendment. His contention is procedurally barred, *see Coleman v. Thompson*, 501 U.S. 722, 729 (1991), and lacks merit, *see Lockyer v. Andrade*, 538 U.S. 63 (2003); *Ewing v. California*, 538 U.S. 11 (2003); *Rios v. Garcia*, 390 F.3d 1082, 1086 (9th Cir. 2004).

DISMISSED